

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Raphael Mendez,

Plaintiff,

v.

ORDER

Civil No. 12-1128 ADM/FLN

Warden B.R. Jett, and
FMC Legal Mail Room,

Defendants.

Raphael Mendez, pro se.

This matter is before the undersigned United States District Judge for consideration of Plaintiff Raphael Mendez's ("Mendez") Objection [Docket No. 5] to Magistrate Judge Franklin L. Noel's June 1, 2012 Report and Recommendation ("R&R") [Docket No. 4]. Based on a de novo review of the record, the Court overrules Mendez's Objection and adopts the R&R.

The factual background of this matter is set forth thoroughly in Judge Noel's R&R and is incorporated here by reference. The basis for Mendez's Objection appears to be his misunderstanding that his demand for a jury trial somehow precludes his case from review by a Magistrate Judge.

Mendez is a frequent litigator in federal court and is currently civilly committed at a Federal Medical Center (the "FMC"). See Mendez v. United States, Civil No. 12-28, 2012 WL 1110125, at *1 (D. Minn. April 3, 2012) (noting Mendez is civilly committed at the FMC). He commenced this present civil rights action alleging FMC staff (possibly due to some racial animus) interfered with his mail preventing delivery of appeals-related mail to the U.S. Courts of

Appeals for the Third and Fourth Circuits. See generally Compl. [Docket No. 1]. In bringing this action, Mendez filed a Motion for Leave to Proceed [] In Forma Pauperis [Docket No. 2] (the “IFP Application”). In this District, as allowed by 28 U.S.C. § 636, Magistrate Judges hear and determine pretrial matters. Local Rule 72.1. Therefore, there was nothing improper about Judge Noel issuing an R&R in response to the IFP Application.

Furthermore, there was nothing improper about Judge Noel recommending dismissal. Courts may dismiss in forma pauperis proceedings at any time if it is determined the action fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). Mendez objects that he asked for a jury trial. However, the right to a jury trial does not include the right to be free from procedural mechanisms that end baseless claims. See Fidelity & Deposit Co. of Md. v. United States, 187 U.S. 315, 320 (1902) (holding procedural rules may prescribe the means of raising an issue without infringing on right to jury trial). “It is well settled that an otherwise proper ruling is not erroneous merely because it has the incidental effect of precluding a jury trial.” Perkins v. Spivey, 911 F.2d 22, 28 n.6 (8th Cir. 1990) (citing Fidelity & Deposit Co., 187 U.S. at 319–21). Judge Noel’s recommendation was entirely appropriate. Mendez’s claims against Warden B.R. Jett and the FMC Legal Mail Room are not cognizable because they are barred by sovereign immunity, and Mendez has not alleged any actual injury. Furthermore, FMC Legal Mail Room is not a cognizable entity. Therefore, the R&R is adopted, the IFP Application is denied, and this action is dismissed.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Mendez’s Objection [Docket No. 5] is **OVERRULED**;

2. Judge Noel's Report and Recommendation [Docket No. 4] is **ADOPTED**;
3. The IFP Application [Docket No. 2] is **DENIED**; and
4. All claims in the Complaint [Docket No. 1] are **DISMISSED with prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: July 23, 2012.